

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WARREN DURHAM JR.,	)	C.A. No. 04-297 ERIE
Plaintiff	)	
V.	)	District Judge McLaughlin
	)	Magistrate Judge Baxter
CITY AND COUNTY OF ERIE	)	
ET AL.	)	
Defendants.	)	

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rules of Civil Procedure 56, Warren Durham Jr., Plaintiff in the above captioned matter, move the Court to enter judgment in his favor and against Defendants City of Erie, James Washburn and Patrick Durkin, and avers as follows:

1. Based upon the facts as submitted in the pleadings and applicable law, the Plaintiff is entitled to judgment as a matter of law.
2. Given the undisputed facts of record, no reasonable jury would absolve the Defendants of deprivation of Plaintiff's constitutional right to a fair trial.
3. Based upon the facts of the case and applicable laws, Defendants Washburn and Durkin are not entitled to qualified immunity.
4. Based upon the facts of the case and applicable laws, Defendant City of Erie is subject to liability under section 1983.

WHEREFORE, the Plaintiff respectfully request this Honorable Court to grant judgment in his favor.

U.S. DISTRICT COURT  
CLERK

06 AUG 28 P 2:07

U.S. DISTRICT COURT  
CLERK

06 AUG 28 P 2:07

Respectfully submitted,  
*Warren Durham Jr.*  
WARREN DURHAM JR.

FILED

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CITY AND COUNTY OF ERIE	)	
ET AL,	)	
Defendants.	)	


**CERTIFICATE OF SERVICE**

I, Warren Durham Jr., hereby certify that I am this day serving a true and correct copy of the foregoing "Motion for Summary Judgment" upon the persons named below by FIRST CLASS MAIL, postage prepaid, to:

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DATED: 8/25/06